

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|   |   |                               |
|---|---|-------------------------------|
| <b>ERNEST GOOLSBY</b>                   | ) |                               |
| Claimant                                | ) |                               |
| VS.                                     | ) |                               |
|   | ) | Docket Nos. 248,121 & 248,122 |
| <b>DODGE CITY SAND AND JAG II, INC.</b> | ) |                               |
| Respondents                             | ) |                               |
| AND                                     | ) |                               |
|   | ) |                               |
| <b>EMPLOYERS MUTUAL CASUALTY</b>        | ) |                               |
| Insurance Carrier                       | ) |                               |

**ORDER**

This is an appeal from a preliminary hearing order in two separately docketed claims. Docket No. 248,121 is appealed by respondent and Docket No. 248,122 is appealed by claimant.

**ISSUES**

Docket No. 248,121 is a claim for injury to claimant's back, neck, both hands, and arms. Claimant testified to an initial injury in March 1997 and claimant's Application for Hearing alleges this is a series of accidents through April 25, 1997. The ALJ ordered respondent to pay claimant's medical expenses and respondent appeals. Respondent contends claimant has not proven he suffered accidental injury arising out of and in the course of his employment and has not proven that he gave timely notice as required by K.S.A. 44-520.

Docket No. 248,122 is a claim for injury to claimant's right shoulder and chest on May 22, 1999. In the appealed Order, the ALJ denied claimant's request for an order requiring respondent to pay claimant's wife a fee in addition to the mileage for transporting claimant to Kansas City for surgery. On appeal, claimant contends K.S.A. 44-510(a) and K.A.R. 51-9-11 require the employer to pay claimant's wife for her time in transporting claimant to and from their home in Dodge City to surgery in Kansas City.

**Findings of Fact and Conclusions of Law**

After reviewing the record and considering the arguments, the Appeals Board finds and concludes as follows:

1. In Docket No. 248,121, the Board concludes the ALJ's Order for payment of medical expenses should be reversed.

This claim involves two injuries, one to claimant's back and the second to his upper extremities, diagnosed as carpal tunnel syndrome. After reviewing the record, the Board finds claimant has not met his burden of proving either of these injuries arose out of and in the course of employment and, as to the carpal tunnel syndrome, has not proven that he gave timely notice. The back injury and the upper extremity injuries will be discussed here separately.

Claimant completed an accident report, Exhibit 1 to claimant's deposition. The report is dated May 5, 1997, indicating he injured his back on March 12, 1997. Claimant initially testified this accident report was not the original report. When later asked why he had not done the accident report earlier, he testified that he had already notified Eric Thompson of this accident. Claimant did not say when he notified Eric Thompson, only suggesting that it was earlier. Leslie Henry, the person responsible for receiving reports of accidents, testified Exhibit 1 was the only report and that she remembers mentioning to claimant the need to report earlier. Ms. Henry went to Mr. Jack Taylor, claimant's supervisor, and asked Mr. Taylor if he had witnessed any accident. Mr. Taylor said he had not, that claimant had come by his office to report it. Ms. Henry was then asked when this happened, perhaps intending to ask when claimant came by Mr. Taylor's office, and Ms. Henry responds that she went to visit Mr. Taylor about this on May 5, 1997, the date claimant completed the accident report. The record does not otherwise show when claimant reported this alleged accident to Mr. Taylor.

The record contains notes from a visit by claimant to Dr. Kirk L. Henrichs on March 12, 1997. These notes show complaints of soreness to the "thoracolumbar thoracic spine up into the neck." The same note says it has been bothering claimant for two weeks and that the etiology is unknown. As he had initially with the accident report, claimant insists this medical record is not accurate.

Dr. Henrichs' note of April 7, 1997, says claimant did much lifting over the weekend. Claimant acknowledges that he told his supervisor something about his sister moving. The record is not clear what claimant is supposed to have said. But claimant at one point says he lied to respondent about this. He later testified that he did so because of his job.

The record contains no expert medical opinion about the cause of claimant's back problems and reflects that claimant had back problems before the alleged injury.

The combination of the above factors leads the Board to the conclusion that the evidence as a whole does not establish by a preponderance of the evidence that claimant sustained a back injury arising out of and in the course of his employment.

The Board concludes the first proven notice of the back injury was given on May 5, 1997, the date of the accident report. Claimant has testified that his back gradually became worse from the work through his last day worked. The Application for Hearing alleges that the injury occurred as a result of a series through April 25, 1997. Claimant was terminated from his employment with respondent due to a dispute with a coworker. Although claimant was told of his termination sometime in late April 1997, perhaps April 25, 1997, he was given two weeks to find a job and his last day worked was May 9, 1997. Thus, if claimant was injured through his last day worked, as he claims, the notice on May 5, 1997, was timely. The Board has concluded, however, claimant has failed to meet his burden of proving accidental injury arising out of and in the course of employment and, as to the back injury, makes no finding on the notice issue.

2. As to the upper extremity injuries, the Board finds that claimant has failed to meet his burden of proving either that he sustained accidental injury arising out of and in the course of employment or of proving that he gave timely notice.

First, as with the back injury, the record contains no expert opinion regarding the cause of claimant's carpal tunnel syndrome. In fact, the record does not establish what part of the work claimant is blaming for the carpal tunnel syndrome. At one point in the Preliminary Hearing (p. 34, 35), claimant suggests that the upper extremity injuries also occurred in March of 1997. But the testimony does not otherwise attribute the injuries to any specific work. In general, the Board does not consider the evidence to adequately establish the cause of the carpal tunnel syndrome.

The Board also concludes claimant did not give timely notice. Claimant testified that he reported the upper extremity problems he was having before he left employment in May of 1997. But this testimony does not appear credible in light of other evidence. The accident report claimant completed, on May 5, 1997, Exhibit 1 to the claimant's deposition, makes no mention of any problem other than the back problem. When asked about this, claimant initially testified he was not aware of the symptoms. He later said he did have symptoms. The initial medical records for treatment after claimant left employment contain no mention of problems with the upper extremities. The earliest mention in the medical record of upper extremity problems occurs in the records of Dr. Villanueva in September of 1997. The records from Dr. Alan R. Brewer in October of 1997 then state that, referring to numbness in his hands, claimant "just woke up with it." Dr. Brewer's records also state the numbness has existed for about two weeks. Claimant again denies that this is an accurate history, but the medical records from a variety of sources are in conflict with claimant's version of the events.

For these reasons, the Board finds, as above indicated, claimant has not proven the upper extremity injuries arose out of and in the course of employment. The Board also finds claimant did not give timely notice. The Board has made a finding on notice because, with the upper extremity injuries, even if they were shown to arise out of employment, the Board would find, based on the record to date, that claimant did not give timely notice until more than 75 days after he left employment with the respondent.

3. In Docket No. 248,122, the Board finds the appeal does not raise a jurisdictional issue.

In Docket No. 248,122, claimant argues that his wife should be compensated for time she spent taking him to Kansas City for surgery. Respondent has paid mileage but disputes the additional charge. The ALJ denied claimant's request.

The issue raised in this appeal is not a jurisdictional issue. K.S.A. 44-534a. On appeals from preliminary hearing orders, the Board has limited jurisdiction. The Board may, at that stage, only review allegations the ALJ exceeded his/her jurisdiction. K.S.A. 44-551. Since the issue raised is not jurisdictional, the Board must, without ruling on the merits, dismiss the appeal. The issue would be subject to review as the part of an appeal from a final award.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Pamela J. Fuller on May 30, 2000, in Docket No. 248,121, should be, and is hereby, reversed. The appeal on the Order entered by Administrative Law Judge Pamela J. Fuller on May 25, 2000, in Docket No. 248,122, should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2000.

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BOARD MEMBER

c: Chris A. Clements, Wichita KS  
James M. McVay, Great Bend KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director